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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. STEVEN JOSEPH NOBLE, Defendant and Appellant.	B265511 (Los Angeles County Super. Ct. No. YA043731)

APPEAL from an order of the Superior Court of Los Angeles County, Eric C. Taylor, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Paul S. Thies, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Steven Joseph Noble appeals from the trial court's denial of his petition under Penal Code section 1170.18, subdivision (a)[1] to reduce his conviction of grand theft person (§ 487, subd. (c)), for which he is currently serving a three-strike sentence, to a misdemeanor. He contends that: (1) the trial court erred because it erroneously believed that he had previously been convicted of robbery, and (2) his conviction of violating section 487, subdivision (c) was eligible for reduction because the prosecution did not prove that the value of the property taken was more than $950.[2] We conclude that although the trial court erred in its reason for denying the petition, the error was not prejudicial, because defendant has a prior conviction of a disqualifying offense. Further, defendant failed to prove that the value of the property he took was less than $950. Therefore, even though the trial court erred in its reason for denying the petition to recall defendant's sentence, the error was not prejudicial.

BACKGROUND

Following the trial court's grant of a motion for judgment of acquittal on an alternative robbery charge (§ 211), a jury convicted defendant of grand theft person (§ 487, subd. (c)). The evidence at trial showed that defendant snatched victim Dolores Daszkoski's purse and fled.

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[1] All section references are to the Penal Code.

[2] In his opening brief, defendant also challenged the sentencing court's imposition of five-year terms for his prior serious felony convictions. However, in his reply brief, he states that the issue is moot, because those terms were vacated by the California Supreme Court on defendant's habeas corpus petition.

In a bifurcated trial, the trial court found that appellant had two prior "strike" convictions (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), two serious felony convictions (§ 667, subd. (a)(1)), and one prior prison term (667.5, subd. (b)). One of the alleged strike and serious felony convictions found true was for violating section 288, subdivision (b). The trial court sentenced defendant to 35 years to life in state prison (25 years to life as a third-strike defendant, plus 10 years for the two serious felony priors). That sentence has since been modified to 25 years to life, eliminating the 10 years imposed for the serious violent felony convictions. (See fn. 2, ante.)

Defendant appealed from the judgment. In a nonpublished opinion filed on June 7, 2001 (B144729), we modified the judgment by ordering the prison prior stricken, and otherwise affirmed.[3]

On April 27, 2015, appellant filed a petition for recall of sentence pursuant to section 1170.18, subdivision (a), to reduce his conviction for violating section 487, subdivision (c) to a misdemeanor. The court denied appellant's petition, erroneously believing that defendant had been convicted of robbery, and concluding therefore that defendant's "felony conviction is for an offense that does not qualify under Penal Code § 1170.18(a) or (f)."

DISCUSSION

Defendant contends that the trial court erred in denying his motion to recall his sentence, because the court erroneously believed that he had been convicted of robbery rather than grand theft person. We agree that the trial court's reason for denying the petition was incorrect, but defendant suffered no prejudice because the record shows that he was previously convicted of a

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[3] At defendant's request, we have taken judicial notice of the prior opinion.

disqualifying offense, and because he failed to prove that the value of the property taken was less than $950.

"'On November 4, 2014, the voters enacted Proposition 47, the Safe Neighborhoods and Schools Act . . . .' [Citation.] 'Proposition 47 makes certain drug-and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).' [Citation.] [¶] Proposition 47 also added section 1170.18, concerning persons currently serving a sentence for a conviction of a crime that the proposition reduced to a misdemeanor. It permits such a person to 'petition for a recall of sentence before the trial court that entered judgment of conviction in his or her case to request resentencing in accordance with' specified sections that 'have been amended or added by this act.' (§ 1170.18, subd. (a).) If the trial court finds that the person meets the criteria of subdivision (a), it must recall the sentence and resentence the person to a misdemeanor, 'unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety.' (§ 1170.18, subd. (b).)" (*People v. Morales* (2016) 63 Cal.4th 399, 404.)

Here, the trial court erroneously believed that defendant's previous conviction was for robbery, a felony unaffected by Proposition 47. However, defendant actually was convicted of grand theft person (§ 487, subd. (c)), which is one of the theft offenses converted by Proposition 47 from a wobbler to a misdemeanor when the property taken does not exceed $950. (§ 490.2, subd. (a).) Thus, the trial court's rationale for denying the petition to recall the sentence was incorrect.

Although the Attorney General concedes this point, she argues that defendant is ineligible for reduction as a matter of law. Section 1170.18, subdivision (i) provides in part that "[t]he provisions of this section shall not apply to persons who have one or more prior convictions . . . for an offense requiring registration pursuant to subdivision (c) of Section 290." According to defendant's probation report, he has a prior conviction of violating section 288, subdivision (b). That conviction was alleged as a strike and a prior serious felony in the underlying case, and the trial court found those allegations true. Thus, the record shows that defendant has a prior conviction of violating section 288, subdivision (b), which is an offense listed in section 290 for which registration as a sex offender is mandatory.

Defendant contends that the prosecution has the burden of proving the existence of a disqualifying prior conviction, and that it must do so in the trial court. He argues that perhaps other records might show that the conviction was vacated or modified. Therefore, he urges us not to affirm the denial of his petition to recall his sentence. However, the record before us is clear: in the case which resulted in defendant's conviction of section 487, subdivision (c) – the offense he seeks to have reduced – the prosecution proved beyond a reasonable doubt that he had a prior conviction of violating section 288, subdivision (b), an offense that disqualifies him for reduction under section 1170.18, subdivision (i). Thus, even though the trial court erred in its reasoning in denying the petition, it is not reasonably probable that a different result would have occurred absent the error. (*People v. Watson* (1956) 46 Cal.2d 818, 836.) On this record, a remand would serve no purpose.

Moreover, defendant's petition to recall the sentence was defective for failing to prove that the value of the property taken was less than $950.

Contrary to defendant's contention, he bore the initial burden of establishing that fact, and he did not meet it. (See *People v. Hudson* (2016) 2 Cal.App.5th 575, 583.) On appeal, defendant asks this court to review portions of the reporter's transcript at trial to conclude that the value of the property taken – the purse and its contents – was less than $950. We decline. He did not produce that evidence in the trial court, and hence his petition was defective. Moreover, the trial testimony (which we need not summarize here) is far from conclusive as to the value of the property taken. Thus, defendant failed to prove that the value of the property taken did not exceed $950. Hence, this failure is an additional reason why the trial court's erroneous rationale for denying the petition to recall the sentence was not prejudicial, and why a remand is inappropriate.

DISPOSITION

The order denying the petition to recall the sentence is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J. MANELLA, J.